

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4871 of 1986

with

SPECIAL CIVIL APPLICATION No 4886 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.R.JAIN

Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

MADHAVLAL CHHAGANLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4871 of 1986

MR MIHIR H JOSHI for Petitioners

M/S PURNANAND & CO for Respondent No. 1

MR ARUN H MEHTA for Respondent No. 2

MR DU SHAH for Respondent No. 3

MR SN SHELAT for Respondent No. 4

2. Special Civil Application No 4886 of 1992

MR MIHIR H JOSHI for Petitioners

/S PURNANAND & CO for Respondent No. 1

MR ARUN H MEHTA for Respondent No. 2

MR DU SHAH for Respondent No. 3

MR SN SHELAT for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN
Date of decision: 10/07/96

ORAL JUDGEMENT

The petitioners by filing these petitions have sought appropriate writ, order or direction for quashing and setting aside the notification dated 4.11.1973 under Sec. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") which is published in Government Gazette on 8.11.1973 and for quashing and setting aside the notification dated 3.11.1976 under Sec.6 of the Act which is published in Government Gazette on 4.11.1976 (Annexures "D" and "E" respectively). The petitioners have also prayed to quash and set aside the notices under Sec. 9 of the Act for declaring the award. The Government of Gujarat was satisfied that the lands specified in the Schedule to the notification under Sec. 4 were likely to be needed for a public purpose i.e. for establishment of industrial area by Gujarat Industrial Development Corporation, hence published a notification under Sec. 4 of the Act. The lands covered several survey numbers of village Kathwada, Taluka Daskroi, Dist. Ahmedabad and Village Nicol of Ahmedabad City. The petitioners' lands are situated in Ahmedabad City area of Nicol Village bearing Survey Nos. 50/4, 52, 53, 54, 58/1, 58/2, 59/1, 59/2 and 64 (the Survey Nos. are subject matter of both the petitions).

2. It appears that thereafter the Government of Gujarat was satisfied after considering the report of the Special Land Acquisition Officer, Ahmedabad under sub-section (2) of Section 5-A of the Act that the said lands are needed to be acquired partly at the public expense for the public purpose specified in column 4 of the schedule to the notification under Sec. 6. It seems that thereafter for a pretty long period nothing happened and, on 17.12.1985, notice under Sec. 9 of the Act came to be issued and thereafter, award is pronounced on 22.9.1986.

3. The petitioners have challenged the legality of this award on the grounds that (i) though the lands were covered under the notification, the proceedings have not been concluded for a pretty long period and (ii) in the vicinity lands bearing other survey numbers have been acquired in the year 1979 and are lying unutilised though the possession was taken in the year 1979, and therefore,

there is no need for the Corporation to acquire these lands.

4. According to the petitioners as Act No. 68 of 1984 by which Sec. 11-A has been inserted in the Act with effect from 24.9.1984 providing the limitation for declaration of the award, the respondents wake up and have issued notice under Sec. 9 of the Act. According to the petitioners, the proceedings have been accelerated in view of the said amendment. As for a pretty long period no action has been taken, the petitioners request that the notifications should be quashed.

5. Section 11-A of the Act reads as under :

"11-A - Period within which an award shall be made.- The Collector shall make an award under Sec. 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse :

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement."

In view of the proviso, it is clear that if the declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, then the award should be made within two years from the commencement of the Act, 1984 failing which proceedings shall lapse. Before 24.9.1984 notifications under Secs. 4 and 6 were already issued after following the procedures laid down in the Act. Soon after the publication of notifications, the petitioners have not challenged the issuance of notifications under Secs. 4 and 6. They have kept mum for a period of 13 years and realising that in view of the insertion of Sec. 11-A of the Act, the lands are likely to be acquired, they have approached the Court. Notice under Sec. 9 has been issued in December, 1985. It would mean that the Special Land Acquisition officer decided to proceed further with the land acquisition proceedings. Had he not proceeded with the proceedings and would have failed to declare the award within a period of two year from 24.9.1984 as provided in the proviso, the publication of the award would have been in violation of Sec. 11 A of the Act. In the instant case, as the award has been made within

the period of two years from 24.9.1984, it cannot be said that the award is not made in time. M/s Shah and Nanavati, appearing for the Corporation, submitted that this Court had an occasion to consider exactly the similar question in the case of Bhikhabhai H. Patel Vs. The State of Gujarat, reported in 1995 (1). GLH, Page 334. In that case, 17 years time was taken in making the award. In that case, notification under Sec. 6 was issued on 18.1.1969 and yet within the period of two years from the commencement of Land Acquisition (Amendment) Act, 1984, the award was made. It appears that with a view to avoid the delay and hardships to the claimant, the Legislature inserted Sec. 11-A of the Act and gave two years time limit for making the award from the commencement of the amendment Act. The Legislature was aware about the pending proceedings and, therefore, has provided a time limit of two years. If within that period which is reasonable, the proceedings have not been terminated, then certainly, thereafter, the acquisition proceedings would lapse, but in the instant case, as it appears that the authority has exercised powers within the prescribed time and the award has been made, hence, we find no merits.

6. It is required to be noted that notifications which are issued on 4.10.1973 and 3.11.1976 are the subject matter of this petition. Notification under Sec. 4 of the Act is challenged after 13 years while notification under Sec. 6 is challenged after a period of 10 years. The Apex Court in the case of State of Orissa vs. Dhobei Sethi & Anr., reported in JT 1995(6) SC 624 has held as under :-

"As regards OJC 43 of 1977, in view of the fact that the notification was issued as early as on July 16, 1970, the writ petition having been filed after 7 years, the High Court ought to have dismissed the writ petition on the ground of laches. We, therefore, hold that the High Court has not properly exercised its power under Article 226 of the Constitution in upsetting the notification dated December 16, 1970 after a lapse of 7 years."

7. The petitioners approached the Court after a period of about 10 years. Considering the publication of notifications under Sec. 4/6 of the Act, if they would have approached immediately after publication of the notifications, the matters would be viewed from different

angle. The Legislature has permitted the authorities exercising powers to make an award within a period of two years from the date of publication of notification and in case if the proceedings were pending on the date of insertion of Sec. 11-A of the Act, then within a period of two years from the date of insertion i.e. 24.9.1984. In the instant case, the award is made within the time stipulated. We find no merits in the petitions and the petitions are required to be dismissed with costs and dismissed accordingly. Rule discharged. Ad interim relief granted earlier stands vacated forthwith.

7. In view of this order, no order on Civil Application No. 1501 of 1995.

ssm./